

REMARKS

I. INTRODUCTION

Applicants thank the Examiner for the indication of allowable subject matter in claims 3-4, 6-7, 10-11, and 13-21. Applicants have amended claims 10, 12-14 and 22. Accordingly, claims 1-22 are presently pending in this application. Applicants respectfully request reconsideration of the application in view of the foregoing amendments and the following arguments.

II. AMENDMENTS TO THE CLAIMS

Applicants have amended claims 10 and 12-14 to change the word “method” to “system” in accordance with the Examiner’s suggestion given the claims dependency on claim 8. Applicants have amended claim 22 to add the language “said one value corresponding to said closed position of said throttle plate”. Support for this amendment can be found throughout the specification and drawings including in original claim 1. Applicants respectfully submit that these amendments do not add any new matter.

III. OBJECTIONS TO CLAIMS 10-14

Claims 10-14 stand objected to due to informalities. In particular, claims 10 and 12-14 recite a “method”, but depend from claim 8 which recites a “system.”¹ Applicants have amended claims 10 and 12-14 to recite a “system”. Accordingly, Applicants submit that the objection has been overcome and request that it be withdrawn.

¹ The Examiner has identified claim 11 as having this informality as well. Applicants respectfully submit, however, that claim 11 as filed already recites a “system” as opposed to a “method.”

IV. REJECTION OF CLAIM 22 UNDER 35 U.S.C. § 112

Claim 22 stands rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Applicants have amended claim 22 to further clarify the recitation of the invention. Applicants submit, however, that claim 22 is definite and does particularly point out the Applicants' invention—namely to determine the closed position of a throttle plate by selecting from among multiple values indicative of the closed position based on temperature. Applicants submit that claim 22, both before and after the amendment, does set forth this invention in two steps: (i) determining the temperature of the engine; and (ii) selecting one of first and second throttle plate closed position values stored in a memory based on the temperature. Although the recitation may appear broad, Applicants submit that no prior art has yet been uncovered that would prohibit such a broad recitation of the invention. Applicants therefore submit that the rejection under 35 U.S.C. § 112, ¶ 2 is improper and request that the rejection be withdrawn.

V. REJECTION OF CLAIM 22 UNDER 35 U.S.C. § 102(B)

Claim 22 stands rejected under 35 U.S.C. § 102(b) as anticipated by Messih et al. (U.S. Patent No. 5,546,910) or Kotwicki et al. (U.S. Patent No. 5,970,961). Applicants have amended claim 22. Applicants respectfully submit that the rejection of claim 22 under 35 U.S.C. § 102(b) is improper because neither Messih et al. nor Kotwicki et al. disclose or suggest all of the limitations recited in claim 22. In re Paulsen, 30 F.3d 1475, 1478-79, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1997) (“A claim is anticipated only if

each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”).

Independent claim 22, as amended, recites “a method for determining a closed position of a throttle plate in an engine” including the step of “selecting one of first and second throttle plate closed position values stored in a memory, said selection being based on said temperature, said one value corresponding to said closed position of said throttle plate”. Applicants respectfully submit that neither Messih et al. nor Kotwicki et al. disclose or suggest a method meeting the above-recited limitation.

Messih et al. discloses a method for controlling fuel injection in an internal combustion engine. Messih et al. nowhere discloses or suggests a method for determining a closed position of a throttle plate in an engine, much less a method meeting the limitations recited in claim 22. The Examiner cites Column 2, lines 23-30 of Messih et al. as referring to a method for determining a close position of a throttle plate in an engine. This passage, however, refers to controlling the position of a throttle plate rather than determining a closed position. The only signal identified in this passage is a throttle position signal 28 that is transmitted to the actuator 29. Col. 2, line 28 and Figure 1. There is simply no disclose or suggestion in this passage relating to determining a closed position of a throttle plate. Similarly, there is no disclosure or suggestion throughout Messih et al. of “selecting one of first and second throttle plate closed position values stored in a memory, said selection being based on said temperature” as recited in claim 22. The Examiner cites column 5, lines 43-61 as disclosing this step limitation. This passage has nothing do to with “selecting one of first and second throttle plate closed position values stored in memory...based on said temperature.” The passage describes

determining the value of a multiplier IMR_EISF_MUL for use in a function. The passage notes that the value of the multiplier is determined in accordance with one of two functions based on the time required for a throttle valve to open or close. Column 5, line 51 to column 6, line 3. There is simply no disclosure in Messih et al. pertinent to Applicants' claimed invention.

Kotwicki et al. disclose a method for controlling the position of an EGR valve rather than a throttle valve. As such, Kotwicki et al. do not disclose or suggest any method for determining a closed position of a throttle plate—much less a method meeting the limitations set forth in claim 22. Even in the EGR valve control method disclosed in Kotwicki et al., there is no analogous step to “selecting one of first and second throttle plate closed position values stored in a memory, said selection being based on said temperature” as recited in claim 22. The only mention of use of temperature (e.g, ECT) is for use in determining whether EGR flow is desired or not. Column 4, lines 16-19. Further, no selection among values is made; rather, a “difference” between two values (named actuation signal (AS)) is determined to control the position of the EGR valve. Column 4, lines 24-34.

Because Messih et al. and Kotwicki et al. do not teach or suggest all of the limitations recited in independent claim 22, Applicants submit that the rejection of claim 22 under 35 U.S.C. § 102(b) is improper. Accordingly, Applicants request that the rejection be withdrawn.

VI. REJECTION OF CLAIMS 1-2, 5, 8-9 AND 12 UNDER 35 U.S.C. § 103(A)
Claims 1-2, 5, 8-9 and 12 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Messih et al. (U.S. Patent No. 5,546,910). Applicants respectfully submit

that the rejection of claims 1-2, 5, 8-9 and 12 under 35 U.S.C. § 103(a) is improper because Messih et al. does not disclose or suggest all of the claimed limitations.

“Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case.” MPEP § 2141 (emphasis in original).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

MPEP § 2143. Applicants submit that Messih et al. fail to teach or suggest all of the limitations set forth in the claims.

Independent claim 1 recites “a method for determining a closed position of a throttle plate in an internal combustion engine”: including the steps of “determining a first closed position value; estimating a temperature of a throttle body of said internal combustion engine; and, selecting one value from said first closed position value and a second closed position value stored in a memory responsive to said temperature, said one value corresponding to said closed position of said throttle plate.” Independent claim 8 recites a system having substantially similar limitations. Applicants respectfully submit that Messih et al. does not disclose or suggest a method or system meeting the above-recited limitations.

As set forth in Section V, Messih et al. discloses a method for controlling fuel injection in an internal combustion engine. Messih et al. nowhere discloses or suggests a method or system for determining a closed position of a throttle plate in an engine, much less a method or system meeting the limitations recited in claims 1 or 8. Applicants again

note that the passage cited by the Examiner, Column 2, lines 23-30, refers to controlling the position of a throttle plate rather than determining a closed position and that the only signal identified in this passage is a throttle position signal 28 that is transmitted to the actuator 29. Col. 2, line 28 and Figure 1. Applicants also note that the throttle position sensor 36 identified by the Examiner relates to a different throttle valve (i.e., the primary throttle valve) than the secondary throttle valve referred to in column 2, lines 23-30 of Messih et al. Messih et al. simply does not disclose a method for determining the closed position of a throttle valve. Messih et al. contains disclosure that references the fact that a throttle valve can assume an open position or a closed position, that it takes a period of time to move between open and closed positions, and that this period of time can be used in controlling fuel injection. That is the total extent of the disclosure of Messih et al., however. Messih et al. does not disclose or suggest any method or system for determining the closed position of a throttle plate—much less a method or system meeting the limitations recited in claims 1 and 8.

Because Messih et al. do not disclose or suggest all of the limitations set forth in independent claims 1 and 8, Applicants submit that the rejections of claims 1 and 8 under 35 U.S.C. § 103(a) is improper. Accordingly, Applicants request that the rejection be withdrawn. Further, because each of claims 2, 5, 9 and 12 depend from one of the aforementioned independent claims, Applicants submit that the rejection of claims 2, 5, 9 and 12 under 35 U.S.C. § 103(a) has also been overcome and request that the rejection be withdrawn.

VII. CONCLUSION

Applicant respectfully requests entry of the above amendments prior to appeal on this matter. If the Examiner has any further questions or concerns, the Examiner is invited to contact the Applicant's undersigned attorney.

Respectfully submitted,



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